

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 23 February 2005

Case Nos.: 2005-SOX-00011
2005-SOX-00012
2005-SOX-00013

In the Matter of

**JEFFREY S. KLIMASKI,
JAMES J. COLLINS,
OSWALDO FELICIANO**
Complainants

and

**PAREXEL INTERNATIONAL, and
BARNETT INTERNATIONAL**
Respondents

RECOMMENDED ORDER
DISMISSING THE COMPLAINT

The complaint in this matter – arising under § 806 of the Corporate and Criminal Fraud Accountability Act of 2003, title VIII of the Sarbanes-Oxley Act of 2002, 18 U.S.C. § 1514A (the “Act”) – was filed with the Occupational Safety and Health Administration (“OSHA”) on or about July 22, 2004. The applicable regulations are contained in 29 C.F.R. Part 1980.¹ On November 8, 2004 OSHA dismissed the complaint. On December 3, 2004 Complainants filed a timely request for a hearing with the Office of Administrative Law Judges. Subsequently the case was assigned to me, and on December 13, 2004 I issued a Notice of Hearing scheduling the hearing to commence on March 14, 2005.

On January 5, 2005 Complainants filed and served a notice of their intention to file a complaint in the U.S. District Court for the Eastern District of Pennsylvania within 15 days, pursuant to the regulation at 29 C.F.R. § 1980.114 (2004). Complainants’ counsel has provided me with copies of the following actions filed in the U.S. District Court for the Eastern District of Pennsylvania:

- Complaint (C.A. No. 05-CV-298) by Complainants Klimaski and Collins against Respondents alleging that the latter violated the Act.

¹ The Department of Labor’s interim regulations (effective May 28, 2003) were replaced by final regulations effective on August 24, 2004. 69 Fed. Reg. No. 163, p. 52104 et seq. (8/24/04).

- Complaint (C.A. No. 04-CV-3798) by Respondents against Complainant Feliciano, et al., and Feliciano's Second Amended Counterclaims, etc., the latter in part alleging that Respondents violated the Act.

Section 806(b)(1) provides that an employee may pursue his or her rights under the Act by

(A) filing a complaint with the Secretary of Labor; or,

(B) if the Secretary has not issued a final decision within 180 days of the complaint and there is no showing that such delay is due to the bad faith of the claimant, bringing an action at law or equity for de novo review in the appropriate district court of the United States, which shall have jurisdiction over such an action without regard to the amount in controversy.

18 U.S.C. § 1514A(b)(1)(A) and (B). In the instant case, it appears that the 180-day period set forth in § 806(b)(1)(B) expired on or about January 24, 2005. Further, the Complainants are presently engaged in litigating their allegations that Respondents violated the Act in the U.S. District Court.

In light of the foregoing, on February 8, 2005 I issued an Order to Show Cause requiring both Complainants and Respondents to show cause, within seven (7) days, why the complaint in the instant case should not be dismissed. However, I have not received a response from any of the parties, and the time for filing an opposition to the dismissal of the complaint in the instant case has expired. Accordingly, the complaint will be dismissed.

ORDER

It is ORDERED that the complaint herein is dismissed. It is further ORDERED that the hearing scheduled to commence on March 14, 2005 is canceled.

A

Robert D. Kaplan
Administrative Law Judge

Cherry Hill, New Jersey

NOTICE OF APPEAL RIGHTS: This decision shall become the final order of the Secretary of Labor pursuant to 29 C.F.R. § 1980.110, unless a petition for review is timely filed with the Administrative Review Board ("Board"), U.S. Department of Labor, Room S-4309, 200 Constitution Avenue, NW, Washington DC 20210, and within 30 days of the filing of the petition, the ARB issues an order notifying the parties that the case has been accepted for review.

The petition for review must specifically identify the findings, conclusions or orders to which exception is taken. Any exception not specifically urged ordinarily will be deemed to have been waived by the parties. To be effective, a petition must be filed within ten business days of the date of the decision of the administrative law judge. The date of the postmark, facsimile transmittal, or e-mail communication will be considered to be the date of filing; if the petition is filed in person, by hand-delivery or other means, the petition is considered filed upon receipt. The petition must be served on all parties and on the Chief Administrative Law Judge at the time it is filed with the Board. Copies of the petition for review and all briefs must be served on the Assistant Secretary, Occupational Safety and Health Administration, and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, Washington, DC 20210. *See* 29 C.F.R. §§ 1980.109(c) and 1980.110(a) and (b).